

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

AFAB INDUSTRIAL SERVICES, INC.,

Plaintiff,

v.

LITTLE CHELSEA, INC., d/b/a

CHELSEA EXCLUSIVE,

,

Defendants.

LITTLE CHELSEA, INC., i/s/h/a

CHELSEA EXCLUSIVE,

Third Party
Plaintiff(s),

v.

VDAN SALES, INC.,

Third Party
Defendants.

CIVIL ACTION NO.: 1:23-cv-03095

**RESPONSE OF AFAB INDUSTRIAL SERVICES, INC. TO LITTLE CHELSEA, INC.’S
MOTION *IN LIMINE* TO EXCLUDE EXPERT AND PHOTOGRAPHS¹**

AFAB hereby responds and opposes LCI’s Motion.

First, AFAB will not dignify with response the puerile and unprofessional language and wild accusations in LCI’s Motion.

¹ LCI failed to comply with the Court’s Individual Rules and Practices, V. 2, requiring a “Meet & Confer”.

Second, LCI's effort to preclude the introduction into evidence of photographs of AUTHENTIC AFAB "MAXIMUM IMPACT" Product is as strange as it is legally baseless, for at least the following reasons:

- 1) The photographs are of a sample, Actual AUTHENTIC AFAB "MAXIMUM IMPACT" canister that has been in AFAB's possession at all relevant times and is still so;
- 2) That canister has, since the service of the Gopaul State Court case in early 2019 been available to LCI, its lawyers and any other party in that case or in this one;
- 3) Neither LCI, its lawyers nor any other party or lawyer in either case have ever requested to examine same;
- 4) That canister was shown to all counsel at the Video Deposition of Everett L. Farr, III, President of AFAB (Ex. "A" – 12/15/23 Transcript of E. Farr);
- 5) That canister will be an Exhibit at Trial;
- 6) Everett L. Farr, III, can and will testify at Trial and identify and authenticate both that canister and the photographs of same; and
- 7) That canister may be examined by counsel still at a mutually convenient time and place, if a proper request is made for same.

Third, the photographs of the two "Gopaul canisters" are those taken by Everett L. Farr, III, at Inspections of same made at the Offices of Gopaul's Attorney, who maintains possession of the actual canisters.

Mr. Farr can and will testify at Trial and identify and authenticate those photographs, and, also, the actual canisters (a) have always been available to LCI and its Counsel through GoPaul's counsel, and (b) will be subpoenaed to be produced at Trial herein.

Fourth, Sansone's Report shows he was asked only, (1) to inspect and identify particular markings on cans that were the result of running the cans through the first station of a machine; and (2) to determine if any similar markings were on: (a) photos of the two canisters from the

New York Inspections (the “Gopaul canisters”) and/or; (b) the sample AUTHENTIC AFAB canister depicted in a photograph.

With Mr. Farr present, Sansone did so and observed that (a) the machine made a unique marking on each of six (6) test canisters run through, (b) that such markings were also on the sample AUTHENTIC AFAB Canister depicted , and (c) such markings were not on either of the two New York Inspection (“Gopaul”) canister photos. Mr. Farr can and will testify at Trial to those same observations and all nine (9) canisters themselves will be introduced into evidence so the Court itself can see exactly what Mr. Sansone and Mr. Farr observed and will testify about.

Finally, in order to save time, money and hassle, AFAB will not present Mr. Sansone as an “Expert Witness”. However, he and Mr. Farr (who was present during the testing and comparisons) will both testify as Fact Witnesses, whose testimony may include and/or constitute Lay Opinions (F.R. Ev. 701). Other Counsel will be welcome to cross-examine both as allowed by the Rules.

WHEREFORE, AFAB requests the Motion be DENIED as to the Photographs and marked MOOT as to “expert testimony” of Mr. Sansone, only.

Dated: November 25, 2024

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Dated: November 25, 2024

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